

REMARKS

The issues outstanding in the Office Action mailed October 31, 2005, are the objections to the claims and the rejections under 35 U.S.C §§112, 102 and 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Claim Objections

Claims 6 and 7 have been objected to as a result of a typographical error. Applicants appreciate the Examiner noting this error. Appropriate correction has been made, and withdrawal of the objection is respectfully requested.

Rejections Under 35 U.S.C §112

Claims 2 - 8 and 10 - 11 have been rejected under 35 U.S.C §112, second paragraph. The inconsistency in the preambles of claims 2 - 6 has been noted, and the Examiner is thanked for highlighting this issue. Appropriate correction has been made, which correction does not change the scope of the claims either literally or for purposes of the doctrine of equivalents. Reconsideration of this portion of the rejection is respectfully requested.

Claim 7 has been rejected as a result of the recitation of "wet chemical methods." In fact, such "wet chemical methods" are well known by one of ordinary skill in the art, and refer to precipitation of oxides on the pigment substrate from their salts, by manipulation of the pH of a solution. Since one of ordinary skill in the art would understand without question that this is what is meant by "wet chemical methods", it is submitted that the term is sufficient. Similarly, with respect to "hydrolytic decomposition of metal salts," the types of metal salts, for example, halides, are well known in the art in this type of a process and it is submitted that the claim is in no way indefinite to one of ordinary skill in the art.

Finally, it is noted, claims 10 and 11 have been now made consistent with claim

1 with respect to their preamble. Reconsideration of all the rejections under 35 U.S.C §112 is therefore respectfully requested.

Rejections Under 35 U.S.C §102/103

Claims 1 - 10 and 12 - 14 have been rejected under 35 U.S.C §102(b) over Bauer '237, commonly assigned with the present application. Reconsideration of this rejection is again respectfully requested.

As will be recalled, Bauer discloses pigments having matrix particles coated with, for example, metal oxides, so that interference colors are produced. See page 9 of the translations, the second full paragraph. In discussing the interference effect, Bauer teaches that the interference or gloss effect occurs when light at the interfaces of the metal oxide layers and surface is in part reflected, the reflected rays interfere with each other, and, where the metal oxide layers are of appropriate thickness, thus produce interference colors. See page 10, the second paragraph. While Bauer indicates that pigments can be produced with a "color flop", i.e., a viewing-angle-independent body color and viewing-angle-dependent interference color, which color changes from one hue to a second hue, such a color change does not anticipate or suggest *color travel* in which a continuum of color is seen, dependent upon viewing angle. For example, in example 1 of the present application, a silver pigment with color travel from green to red-violet to gold-green is seen; in example 2, a silver pigment with color travel from neutral silver to red-violet to gold-yellow is seen; and in example 3, a silver pigment with color travel from bluish silver to red to gold-green is seen. Bauer does not suggest the production of such a color travel. Nor does Bauer suggest matching of the substrate to the TiO₂ coating, to enhance such effect. See claim 8 herein.

Instead in the examples of Bauer, pigments with angle-dependence of the hue are not produced. Example 15, cited at page 3 of the Office Action (and for that matter example 17) discloses pigments with a substrate which is a doped silica matrix. In example 15, the silica flakes are doped with titania particles and a stabilizer, in example 17 the silica flakes contain a dye. Such materials do not exhibit angle-dependence of the hue, much less color travel.

Accordingly, it is submitted that Bauer does not anticipate, or for that matter, suggest the present claims. However, the current Office Action argues that "the pigment is the same" and "would exhibit color travel and Applicant has not provided any convincing evidence showing that the pigment of the reference does not exhibit color travel." In fact, it is submitted that one of ordinary skill in the art, reading the reference and its discussion of "color flop", and viewing the reference examples, knows that color travel would not be produced where, e.g., color flop is seen. By analogy, it is as if the prior art describes a light switch, having an on and off position, and the PTO argues that Applicant has not demonstrated that the light switch with on/off modes does not incorporate a dimmer allowing intermediate light levels.

Moreover, it is clear that the pigments presently claimed in those of the reference are not "the same." The reference does not suggest the individual platelets having refractive index of less than or equal to 1.9 and an average thickness of individual platelets within a standard deviation of less than or equal to 20%. Thus, the patent does not disclose or teach, pigments which are capable of having a silver color and color travel, as opposed to color flop. As a result, it is submitted that the reference simply does not anticipate the present claims, and that the present rejection should be withdrawn. The same is respectfully requested.

In item 7 at page 4 of the Office Action, claims 1 - 10 and 12 - 14 are rejected under 35 U.S.C §102(b) over Bauer '018, equivalent to WO '237. For the reasons discussed above, accordingly, it is seen that this rejection also cannot stand, and withdrawal thereof is respectfully requested.

Finally, claim 11 has been rejected under 35 U.S.C §103 over Bauer '237 taken with Herget '563. Since Herget does nothing to remedy the above-discussed deficiencies of Bauer, it is clear that this rejection should also be withdrawn. The same is respectfully requested.

The claims of the application are submitted to be in condition for allowance. However, should the Examiner have any questions or comments, he is cordially invited to telephone the undersigned at the number below.



The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

Harry B. Shubin, Reg. No. 32,004
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-2854

Date: May 1, 2006

HBS:jqs
K:\Merck\2000 - 2999\2854\Reply 5-1-06.doc